

District Director
Dallas, Texas
Attn: Chief, EP/EO Division

Director, Exempt Organizations Technical Division
National Office E:EO

United States Council for
World Freedom

Years Involved: 8312, 8412, 8512

/x/ Attached is our memorandum in response to your request for technical advice in the case described above.

// Case returned for further development:

Remarks:

Although the technical advice memorandum does not discuss facts and issues relating to the 1986 year, which is under examination but is not included in the years that were formally the subject of the technical advice request, we recommend that your revocation letter cover 1986. It appears that the issues are the same as in the 1985 year.

Attachments:

Copy of this memorandum
Original and 2 copies of Technical Advice Memorandum
Key District Office case file (in carton)

Copy of each memorandum to ARC (Examination), Southwest Region
Copy of each memorandum to OP:E:O:E, Rm. 2238
Copy of each memorandum to OP:E:EO:P, Rm. 6033
Attn: Research Facility

INTERNAL REVENUE SERVICE

NATIONAL OFFICE TECHNICAL ADVICE MEMORANDUM

District Director
Dallas, Texas

Taxpayer's Name:	United States Council for World Freedom
Taxpayer's Address:	11855 N. 19th Avenue Phoenix, AZ 85029
Taxpayer's Identification Number:	94-2804423
Years Involved:	8312, 8412, 8512
Dates of Conference:	October 9, 1986 and June 9, 1987

Issues:

(1) Does the organization's provision of non-lethal supplies, transportation equipment, and "logistical support" to Nicaraguan "Contra" groups establish that it has been benefitting a bona fide charitable class under section 501(c)(3) of the Internal Revenue Code?

(2) Has the organization established that it is organized and operated in a manner that "lessens the burdens of government" within the meaning of section 501(c)(3) of the Code?

(3) Has the organization maintained sufficient records to document that it retains control and discretion over the use of its assets for charitable purposes?

(4) If revocation of exemption under section 501(c)(3) of the Code is warranted, should the retroactive effect of such revocation under section 7805(b) be limited to calendar years beginning on or after January 1, 1985, the year in which non-charitable operations commence?

Facts:

The United States Council for World Freedom (hereinafter, USOWF) was recognized as exempt in a National Office ruling dated October 14, 1982. The activities described in the application Form 1023 noted that USOWF would gather and exchange information regarding Communist activities and propaganda to inform the American people so as to educate them on the true meaning of Communism. This was to be accomplished by utilizing newsletters, special reports, speakers' bureaus, and seminars.

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The stated purposes, per Article I of the Constitution are, in pertinent part, as follows: "...Render moral and material support to the fight against Communist imperialism by the peoples of free nations... render moral and material support to liberation movements of captive nations under Communist rule".

Other provisions involve the "upholding of human and national rights, exposing the aggressive designs of Communist imperialism by various educational means including cultural exchange, seminars, pamphlets, studies, newsletters, special reports, etc."

The organization is an "outgrowth of", but not subordinate to, the World Anti-Communist League (WACL), which consists of about 150 chapters throughout the world. The USCF chairman, Major General John K. Singlaub, is also a member of the WACL Executive Committee and serves, alternately, as chairman of its coordinating council. WACL is not a tax exempt organization.

During the processing of the organization's application in the National Office, the Service inquired, in a letter dated July 16, 1982, about "the kind of material support you will give to fight Communist imperialism and to liberation movements". The USCF treasurer replied, in an August 14, 1982, response: "At no time will USCF ever contemplate providing materiel or funds to any revolutionary, counter-revolutionary, or liberation movement".

Records provided for the years 1983 and 1984 indicate that the principal operation for that period was the publication of the newsletter, World Freedom Reports. However, during 1985, the operations expanded from educational programs to include expenditures for anti-communist "freedom fighters" which included: boots, motor boats, aircraft, cash, and expenses with respect to supplying the aid. Most of this assistance pertained to the Contra operations in Nicaragua, although some assistance was directed to groups in other geographic areas.

Travel and living expenses were paid to individuals on missions to study methods of supplying insurgents in Nicaraguan and Honduran bases, to set up medical centers in Honduras, to check out communications networks for river supply in Nicaragua, and to provide motors for river boats to be used by Contra groups. On at least two occasions, cash was paid directly to individuals who were Contra leaders but were not agents of USCF. Various supplies, such as boats, motors, food, blankets, clothing, medical supplies and "freedom fighter kits" (toilet articles and candy) were shipped by USCF to the insurgents.

Among the major expenditures in 1985, USCF acquired a helicopter. The helicopter was turned over to the Contra military forces ostensibly to be used as a medical evacuation vehicle. The organization has represented that the machine has been used exclusively for the evacuation of sick and wounded Contras to medical treatment facilities. USCF stated that the helicopter lacks the fittings necessary to mount weapons and

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that there are no plans to refit the helicopter to carry such equipment. The organization's representatives asserted that it was their understanding that medical evacuation missions would not be flown into areas of ongoing combat operations. Subsequently, the organization apparently acquired five other aircraft, including a second helicopter and four small airplanes, intended for the use by the Contras.

The motorized river craft mentioned above, as well as three newly purchased high-speed river boats, were, according to USCWF, used to transport food and medical supplies to the isolated and wounded Contra fighters in Nicaragua, but not to mount weapons or to carry armed combatants.

The costs of acquisition and delivery of the helicopter, the river boat motors, and the high-speed river boats, rather than medical or other supplies, constituted the primary expenditures of the USCWF during 1985. The information available indicates that transportation equipment acquisition continued to be the principal expenses of the USCWF in later periods.

In its submissions, USCWF has represented that the tribes of Indians and Creoles friendly to the resistance in Nicaragua had been subjected to a government policy of genocide directed against them and were in dire need of humanitarian relief so that they could survive.

The organization has provided the Internal Revenue Service with two documents to support its contention that its activities lessen the burdens of government.

The first is a letter from President Reagan to General Singlaub, the USCWF chairman, dated September 12, 1985, in which the President sends his greetings and commendation to USCWF on the occasion of its participation in the World Anti-Communist League's 18th annual conference. The letter notes that "Our Administration is committed to promoting freedom and democracy...So we are committed to maintaining a strong defense. We are also giving humanitarian aid to the forces who are fighting to avert a new round of human suffering in our own hemisphere...I commend you for your part in this noble cause".

The second document is a letter from an attorney-advisor in the State Department's Office of the Legal Advisor, submitted after the first National Office conference. The letter includes the following passage:

The USCWF, in providing what we understand to have been privately-funded clothing, medical supplies, transportation and other assistance to the resistance, has lessened the burden on the United States. USCWF assistance was of particular value because it helped the resistance to survive while the question of the type and extent of U.S. Government funding was being resolved by the Congress. The humanitarian assistance provided by the USCWF to the Nicaraguan Democratic Resistance has been consistent with U.S. foreign policy in Central America and has lessened the burden which the United States Government otherwise would have borne in executing that policy."

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In response to Service requests for case histories, mission diaries, logs or other verifiable records, the following additional information was submitted by the organization in a letter, dated July 6, 1987.

General Singlaub was asked, in May of 1984, by the Undersecretary Defense, Fred Ikle, to chair a panel on methods of countering the Communist-supported guerrillas in El Salvador. Among those briefed on General Singlaub's findings was Lt. Col. Oliver North of the National Security Council.

In January of 1984, on his own initiative and not as a representative of the USOWF, General Singlaub met with Adolfo Calero, then head of the Nicaraguan Democratic Opposition (NDO), one of the Contra factions. He was asked, and agreed, to provide military advice and fund-raising assistance to the NDO. While neither the USOWF nor the United States Government prompted his decision to undertake these missions, General Singlaub reported back to Lt. Col. North and other government officials regarding these efforts.

USOWF became involved later when General Singlaub determined that the Contras needed medical supplies, food and boots, for which purpose he established a project with USOWF. An aide to the Deputy Assistant Secretary of Defense for Latin American Affairs, who was charged with overseeing the provision of humanitarian aid from the private sector, consulted with General Singlaub on the project.

USOWF's verification procedures to insure non-combatant use of the aircraft and boats as well as the delivery of supplies to the intended recipients is expressed in the following sworn statement by General Singlaub, dated October 14, 1986:

"General Singlaub has personally met with commanders in the field to verify that humanitarian items sent by USOWF were actually received and properly used. Other representatives from USOWF have personally gone to Central America to verify that the donated items from the USOWF were received and properly used by the distressed peoples of the Nicaraguan Democratic Resistance."

The organization has produced no records of these discussions nor are there any checklists, logs, or reports attesting to the use of the materials. It appears that the Contra commanders maintain complete discretion as to the details of the use of the supplies and equipment. The only reports received directly by USOWF concern the need for replacement of motors or for major repairs of the aircraft and boats.

Applicable Law:

Section 501(c)(3) of the Code provides for exemption from federal income tax of organizations organized and operated exclusively for charitable purposes. This section also provides that an organization is not organized or operated exclusively for charitable or educational purposes

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Section 1.501(c)(3)-1(d)(2) of the Income Tax Regulations provides that the term "charitable" is used in section 501(c)(3) of the Code in its generally accepted legal sense and includes the relief of the poor and the distressed or of the underprivileged and lessening the burdens of government.

Rev. Rul. 54-304, 1956-2 C.B. 306, provides that tax exempt organizations under section 501(c)(3) of the Code may make distributions to needy individuals without jeopardizing their exempt status so long as they maintain adequate records and case histories to establish the fact that the recipients are bona fide charitable beneficiaries and that the funds are put to charitable uses.

Rev. Rul. 68-489, 1968-2 C.B. 210, provides that an organization will not jeopardize its exemption by distributing funds to non-exempt organizations, provided it retains control and discretion over the use of the funds for section 501(c)(3) purposes.

Rev. Ruls. 63-252, 1963-2 C.B. 131, and 66-79, 1966-1 C.B. 48, describe analogous situations, involving transfer of funds by domestic charities organized in the United States to charitable counterparts in other countries. Deductibility of contributions under section 170 of the Code will be denied unless the domestic organizations can show that they retain control and discretion over the use of the funds by the foreign entities.

Rev. Ruls. 85-1 and 85-2, 1985-1 C.B. 178, provide that a determination of whether an organization is lessening the burdens of a government requires a consideration of whether the organization's activities are activities that a governmental unit considers to be its burden and whether such activities actually "lessen" such governmental burden. To determine whether an activity is a burden of government, the question to be answered is whether there is an "objective manifestation" by the government that it considers such activity to be part of its burden.

Analysis:

Issue #1--Serving a Charitable Class

USCWF purports to be ministering to the humanitarian needs, that is, furnishing supplies and transport for the sick and wounded and providing food, clothing and sanitation equipment, to a group of persons lacking these basic necessities. The groups being aided are characterized by the USCWF as "freedom fighters," engaged in armed resistance against Communist governments in Central America and elsewhere. Although insubstantial amounts of assistance have gone to "freedom fighters" elsewhere, the preponderance of the organization's aid has gone to benefit the Contras. This term defines the guerrilla fighting forces, largely situated in Honduras, including displaced tribes of Indians and Crooles, that have

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fled from the Sandinista government in Nicaragua and who are based in border camps so that they might be trained and armed to conduct raids against targets inside Nicaragua with the intention of destabilizing or deposing the present Nicaraguan government.

The provision of medical supplies, food, and clothing to the injured or distressed could constitute the provision of assistance to a charitable class. Similarly, the provision of medical evacuation or transportation for such assistance to enable it to be delivered to the members of the charitable class could constitute the provision of assistance to the injured or distressed. However, as with the USCF, when the assistance being provided is for the benefit of members of guerrilla fighting forces, whose locations and needs are secret and changing, there must be sufficient controls and accountability to ensure that the assistance reaches the distressed and is used to relieve the distress instead of being diverted for noncharitable use. See Rev. Ruls. 56-304 and 68-489, *supra*. Furthermore, most of the assistance provided by USCF in the period in question was in the form of military type transportation equipment that could be readily converted to noncharitable uses.

By demonstrating that its assistance has been provided to Contra fighting forces, the USCF has not demonstrated that the class of persons benefitted is comprised solely of the injured and distressed as the assistance provided is susceptible of diversion to other uses and for the benefit of other groups.

Issue #2--Lessening the Burdens of Government

The fact that a government sometimes undertakes the activity in which the organization is engaged is insufficient to establish the activity as a government burden to meet the "objective manifestation" test of Rev. Ruls. 85-1 and 85-2. Further, the fact the government, or an official of the government, expresses approval of an organization and its activities is also not a sufficient nexus to establish that the organization is lessening the burdens of government.

A key consideration in determining whether the governmental unit responsible for the function regards the activity conducted by the organization as its burden is the interrelationship between the organization and the government.

In order to determine whether the activity actually lessens the burden, all of the relevant facts and circumstances must be considered. A favorable working relationship between the government and the organization is strong evidence that the organization is actually "lessening" the burdens of government.

In response to requests to show that USCF was operating in cooperation with (and under the guidance or general supervision of) a governmental agency or official, the organization has produced two letters of endorsement and approval, one from the President and another from the State Department. Neither letter shows that USCF has interacted with

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government officials responsible for an ongoing program during the period in question nor do they specify that the organization adhered to the policy and procedural guidelines of a government agency. Absent this evidence of interaction with a governmental unit, there is no showing that the government has considered USCWF's activities to be its burden.

USCWF's statements regarding periodic reporting to or consultations with certain government officials responsible for humanitarian relief in Central America or national security affairs affected by events in that region is evidence only that the U.S. Government was informed about or generally approved of its assistance to the Contras.

It follows that, based on the information submitted, USCWF is unable to demonstrate that it actually lessens the government's burden.

Issue #3--Control and Accountability

USCWF has been unable, after several requests, to adequately document actual delivery of the supplies to intended recipients, to ascertain the actual use made of the materials, or to identify the recipients other than that they generally are affiliated with the Contras. Nor have USCWF officials produced any reports to show that aircraft and boats that were turned over to the control of military commanders and sent into combat zones to supply irregular armed forces were utilized exclusively for charitable purposes. The inability to provide records showing that USCWF maintains control and discretion over the distribution of its supplies and use of its equipment is the exact deficiency pointed out in Rev. Rul. 56-304, supra, concerning distributions to individuals and, in Rev. Rul. 68-489, supra, concerning exempt organizations turning over materials to nonexempt organizations (in this case, the Contra groups).

Under the circumstances outlined above, the USCWF's inability to account for its use of equipment and provisions is also a failure to demonstrate that the class of persons benefitted constitutes a charitable class within the generally accepted legal sense of charity, as opposed to serving the private purposes of the recipients.

In lieu of case histories, mission diaries, logs, or other verifiable records that the Service requested, USCWF has submitted only the statement of the chairman that he along with other USCWF representatives, has, from time to time, conferred with Contra military commanders in the field.

Such irregular and undocumented informal conferences in the field do not constitute sufficient accountability and control. See Rev. Ruls. 56-304 and 68-489, supra. Further, USCWF's disbursements to foreign entities do not evidence the control and discretion referred to in Rev. Ruls. 63-252 and 66-79, supra, affecting deductibility of contributions under section 170 of the Code.

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In summation, there has been no adequate showing that the supplies or equipment provided by USCF have actually been used for charitable purposes.

Issue #4--Section 7805(b) Relief

The Assistant Commissioner (Employee Plans and Exempt Organizations) has granted the organization relief from retroactivity of revocation under section 501(c)(3) of the Code for tax years beginning before January 1, 1985.

Conclusion:

The organization's exempt status under section 501(c)(3) of the Code should be revoked for years beginning January 1, 1985.

-END-

Bloom:sm/OP:E:EO:R:4/9-1-87